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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Logitek, Inc.; MTX Electronics, Inc.

File: B-241639.2; B-241639.3

Date: May 14, 1991

Alan M. Lestz, Esq., Witte, Lestz & Hogan for Logitek, Inc., and Stephen A. Butzer for MTX Electronics, Inc., for the protesters.

Maryann Grodin, Esq., and Donald Sherfick, Esq., Department of the Navy, for the agency.

Steven W. DeGeorge, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests are dismissed as untimely when filed almost 2 months after protester received notice of award; protesters failed to fulfill requirement to diligently pursue grounds for protests.

DECISION

Logitek, Inc., and MTX Electronics, Inc. protest the award of a contract to Saratoga Industries under request for proposals (RFP) No. N00163-90-R-0596, issued by the Department of the Navy, Naval Avionics Center, for electrical power supply units. Both protesters challenge the Navy's evaluation of their proposals. Each argues in essence that they were improperly found nonresponsible in the guise of a technical evaluation.

For the reasons discussed below, we dismiss both protests.

The RFP was issued on June 29, 1990, as a 100-percent small business set-aside for the delivery of a base quantity of 139 high voltage direct current electrical power supply units with an option quantity of 140 additional units. According to the RFP, technical proposals were to be evaluated based upon nine factors including an optional site survey. Award was to be made to the offeror submitting the most advantageous offer, price and other factors considered, with technical factors weighed somewhat more than price.

A total of nine proposals were received by the Navy. Based upon an initial technical evaluation, MTX's proposal was found

unacceptable on its face. Although Logitek's proposal was initially considered acceptable, following a site survey, its proposal was also excluded from the competitive range. Subsequently, by letter dated November 21, the Navy notified both Logitek and MTX that their proposals had been unsuccessful and that Saratoga had been selected as the apparent awardee. The Navy's letter also advised each protester of its right to invoke the established procedures for challenging Saratoga's size status, if deemed appropriate. No such challenges were made, and on December 12, the Navy awarded a contract to Saratoga. Written notice of award was provided to all unsuccessful offerors on January 7, 1991. This notice differed in substance from the November 21 notice only to the extent that it revealed the awarded contract price.

Following its receipt of the notice of award to Saratoga, Logitek requested from the Navy an explanation of the technical evaluation of its proposal and the basis for the award. In response, the Navy provided Logitek with a written summary of the results of the site survey conducted at its facility. This information was received by Logitek on January 14 and, according to the firm, formed the basis for its protest filed with our Office on January 17. MTX, which did not make a similar request for explanation from the Navy, filed its protest on January 22.

The Navy argues that both protests are untimely under our Bid Protest Regulations, which require that protests be filed within 10 working days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1991). According to the Navy, the alleged basis for each protest was made known by the November 21 letter of the contracting officer which notified both protesters that their proposals had been unsuccessful. The Navy maintains that any protest challenging the evaluation of those proposals was therefore required to have been filed within 10 working days of November 21, making these protests untimely. Alternatively, the Navy argues that both protests should be dismissed as untimely because the protesters failed to diligently pursue their grounds for protest.

Logitek responds that the November 21 notice did not provide a ground for protest because it did not reveal the basis for the Navy's determination that its proposal was unacceptable. According to Logitek, that information did not become known until after the award to Saratoga, when it requested and received, on January 14, an explanation for its lack of success. MTX responds similarly that the November 21 notice did not provide it with a ground for protest and argues that it had no reason to protest prior to learning the awarded contract price which was disclosed on January 7. MTX

maintains that its basis for protest arose from learning that the Navy had made award to a higher priced offeror.

Bid protests are serious matters which require effective and equitable procedural standards assuring a fair opportunity to have objections considered consistent with the goal of not unduly disrupting the procurement process. Amerind Constr., Inc.--Recon., B-236686.2, Dec. 1, 1989, 89-2 CPD ¶ 508. Accordingly, our Regulations contain strict timeliness requirements for filing protests, and to ensure that those long-standing requirements are met, a protester has an affirmative obligation to diligently pursue information that forms the basis for its protest. Illumination Control Sys., Inc., B-237196, Dec. 12, 1989, 89-2 CPD ¶ 546.

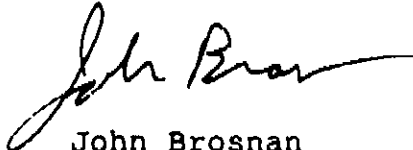
In our view, both protesters failed to diligently pursue the grounds for protest which they have asserted. While, on its face, the November 21 preaward notice arguably did not disclose the grounds for either protest, neither protester provides a convincing explanation for waiting almost 2 months before acting.

For its part, Logitek explains that it did nothing in response to the November 21 notice because the only matter indicated to be at issue at that time was Saratoga's size status. Logitek states that since it had no basis to challenge Saratoga's size status, there was no reason to protest or inquire about a potentially improper award. Logitek further states that it regularly telephoned the Navy subsequent to the November 21 notice in order to check the status of award. This conduct, according to Logitek, fulfilled its duty to diligently pursue potential grounds for protest. We disagree. The November 21 notice explicitly stated that Logitek's proposal had been determined unsuccessful. In view of that information, we believe it became incumbent upon Logitek to diligently pursue the basis for that determination, if a timely challenge were to be made. This required more than occasional telephone calls to the agency generally inquiring about the status of award. By waiting almost 2 months before requesting specific information regarding the evaluation of its proposal, or the basis for the award to Saratoga, we find that Logitek failed to satisfy the requirement for diligent pursuit. The protest is therefore untimely. See Comprehensive Mktg. Sys., Inc., B-238595, May 18, 1990, 90-1 CPD ¶ 487.

We similarly find MTX's protest untimely. Like Logitek, MTX waited until after receipt of the Navy's January 7 notice of award to Saratoga before affirmatively acting. MTX explains that it had no reason to act until receipt of that notice because it, for the first time, disclosed the awarded contract price. We find this explanation unpersuasive, particularly in view of the fact that the RFP expressly made technical factors

more important than cost, thus, allowing for award to other than the lowest priced offeror. MTX knew in November that its proposal had been determined unsuccessful. While that knowledge alone may not have constituted grounds for protest, in our view, it at least triggered the requirement to diligently pursue such grounds. Moreover, MTX states that on November 28, 1990, it was orally informed by the Navy that its proposal had been unsuccessful based upon both technical and price considerations. That additional information, we believe, reinforced the requirement for diligent pursuit on the part of MTX, which under the circumstances here, we find was not fulfilled.

The protests are dismissed.

A handwritten signature in black ink, appearing to read "John Brosnan", with a stylized, flowing script.

John Brosnan
Assistant General Counsel